

\_\_\_\_\_ BILL NO. \_\_\_\_\_

INTRODUCED BY \_\_\_\_\_  
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE TRANSFER OF \$50 MILLION FROM THE COAL SEVERANCE TAX PERMANENT FUND TO THE STATE GENERAL FUND FOR THE BIENNIUM ENDING JUNE 30, 2005; INCREASING THE CIGARETTE SALES TAX BY 50 CENTS; PROVIDING THAT THE INCREASE IN THE CIGARETTE SALES TAX BE DEPOSITED IN THE COAL SEVERANCE TAX PERMANENT FUND TO OFFSET THE AMOUNT TRANSFERRED FROM THE COAL SEVERANCE TAX PERMANENT FUND; PROVIDING THAT THE INCREASE IN THE CIGARETTE SALES TAX BE DEPOSITED IN THE STATE GENERAL FUND UPON OFFSET OF THE AMOUNT TRANSFERRED FROM THE COAL SEVERANCE TAX PERMANENT FUND; AMENDING SECTIONS 16-11-111, 16-11-114, AND 16-11-119, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION.** **Section 1. Transfer from coal severance tax permanent fund.** (1) Beginning July 1, 2003, there is transferred \$50 million, in increments or in a lump sum as ordered by the governor, from the coal severance tax permanent fund to the state general fund to be used in the biennium ending June 30, 2005.

(2) Any money transferred pursuant to subsection (1) must be transferred before June 30, 2005. Money from the cigarette sales tax must be deposited in the coal severance tax permanent fund as provided in 16-11-119(4).

**Section 2.** Section 16-11-111, MCA, is amended to read:

**"16-11-111. Cigarette sales tax -- exemption for sale to tribal member.** (1) (a) A tax on the purchase of cigarettes for consumption, use, or any purpose other than resale in the regular course of business is imposed and must be precollected by the wholesaler and paid to the state of Montana. The tax is ~~48~~ 68 cents on each package containing 20 cigarettes, ~~and, when~~ Whenever packages contain other than 20 cigarettes, there is a tax on each cigarette equal to 1/20th the tax on a package containing 20 cigarettes.

(b) The tax computed under subsection (1)(a) applies to illegally packaged cigarettes under 16-11-307.

(2) The tax imposed in subsection (1) does not apply to quota cigarettes.

(3) Subject to the refund or credit provided in subsection (4), the tax must be precollected on all cigarettes entering a Montana Indian reservation.

(4) Pursuant to the procedure provided in subsection (5), a wholesaler making a sale of cigarettes to a retailer within the boundaries of a Montana Indian reservation may apply to the department for a refund or credit for taxes precollected on cigarettes sold by the retailer to a member of the federally recognized Indian tribe or tribes on whose reservation the sale is made. A wholesaler who does not file a claim within 1 year of the shipment date forfeits the refund or credit.

(5) The distribution of tax-free cigarettes to a tribal member must be implemented through a system of preapproved wholesaler shipments. A licensed Montana wholesaler shall contact the department for approval prior to the shipment of the untaxed cigarettes. The department may authorize sales based on whether the quota, as established in a cooperative agreement between the department and an Indian tribe or as set out in this chapter, has been met. If authorized as a tax-exempt sale, the wholesaler, upon providing proof of order and delivery to a retailer within the boundaries of a Montana Indian reservation selling cigarettes to members of a federally recognized tribe or tribes of that reservation, must be given a ~~credit~~ or refund or credit. Once the quota has been filled, the department shall immediately notify all affected wholesalers that further sales on that reservation must be taxed and that a claim for a refund or credit will not be honored for the remainder of the quota period. Quota allocations are not transferable between quota periods or between reservations.

(6) The total amount of refunds or credits allowed by the department to all wholesalers claiming the refund or credit under subsection (4) for any month may not exceed an amount that is equal to the tax due on the quota allocation. The department shall determine the amount of refunds or credits for each Indian reservation at the beginning of each fiscal year, using the most recent census data available from the bureau of Indian affairs or as provided in a cooperative agreement with the tribe or tribes of the Indian reservation."

**Section 3.** Section 16-11-114, MCA, is amended to read:

**"16-11-114. Insignia discount.** Each licensed wholesaler is entitled to purchase an insignia at full face value, less the following percentage of the face value, upon payment for the insignia as defrayment of the costs of affixing insignia and precollecting the tax on behalf of the state of Montana:

(1) ~~6%~~ 1.59% for the first 2,580 cartons or portion thereof of 2,580 cartons purchased in any calendar month;

(2) ~~4%~~ 1.06% for the next 2,580 cartons or portion thereof of 2,580 cartons purchased in any calendar

1 month; and

2 (3) ~~3%~~ 0.79% for purchases in excess of 5,160 cartons in any calendar month."

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4 **Section 4.** Section 16-11-119, MCA, is amended to read:

5 **"16-11-119. Disposition of taxes.** Cigarette taxes collected under the provisions of 16-11-111 must,  
6 in accordance with the provisions of 15-1-501, be allocated deposited as follows:

7 (1) ~~The amount of 11.11% of the cigarette tax collected on each package of cigarettes must be~~  
8 ~~deposited 2.96%~~ in the state special revenue fund to the credit of the department of public health and human  
9 services for the operation and maintenance of state veterans' nursing homes;

10 (2) ~~The amount of 73.04% must, in accordance with the provisions of 15-1-501, be deposited 19.18%~~  
11 ~~in the state general fund;~~

12 (3) ~~The amount of 15.85% must, in accordance with the provisions of 15-1-501, be deposited 4.23%~~  
13 ~~in the long-range building program account provided for in 17-7-205; and~~

14 (4) 73.63% in the coal severance tax permanent fund until the amount deposited in the coal severance  
15 tax permanent fund equals the amount transferred from the coal severance tax permanent fund to the general  
16 fund pursuant to [section 1] and then in the state general fund."

17  
18 NEW SECTION. **Section 5. Transition.** All wholesalers, distributors, and retailers shall pay the  
19 difference in tax between the former tax rate and the new tax rate on that portion of inventory subject to tax held  
20 by them on July 1, 2003, that exceeds all inventory subject to tax held by them on the last day of their most  
21 recently concluded income tax reporting year.

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23 NEW SECTION. **Section 6. Contingent voidness.** If [this act] does not contain an increase in the  
24 cigarette sales tax for deposit in the coal severance tax permanent fund in an amount equal to the amount of  
25 the transfer from the coal severance tax permanent fund to the state general fund pursuant to [section 1], then  
26 [this act] is void.

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28 NEW SECTION. **Section 7. Three-fourths vote required.** Because [section 1] authorizes the transfer  
29 of money from the coal severance tax permanent fund to the state general fund for appropriation, Article IX,  
30 section 5, of the Montana constitution requires a vote of three-fourths of the members of each house of the

1 legislature for passage.

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3 NEW SECTION. **Section 8. Notification to tribal governments.** The secretary of state shall send a  
4 copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell  
5 band of Chippewa.

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7 NEW SECTION. **Section 9. Effective date.** [This act] is effective on passage and approval.

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9 NEW SECTION. **Section 10. Applicability.** [This act] applies to cigarettes in the possession of  
10 wholesalers on July 1, 2003.

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